IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO.167 OF 2002

1. Shri Raghunath Tamankar,
son of Khemu Tamankar,
aged about 50 years,
employed, residing at
C/o Babu Shetgaonkar,
near Sub-Jail, Sada,
Mormugao - FGoa.

2. Smt. Chandravati Tamankar,
wife of Chandrakant Tamankar,
aged about 57 years,
housewife, residing at
C/o Babu Shetgaonkar,
near Sub-Jail, Sada,
Mormugao - Goa. ... Applicants.

versus

S T A T E
(Through Vasco-da-Gama
Police Station). ... Respondent.

Mr. Arun Bras De Sa, Advocate for the Applicants.

Mrs. Winnie Coutinho, Additional Public Prosecutor
for the State.

CORAM: P. V. HARDAS, J.

DATED: 20TH JUNE, 2003.

ORAL JUDGMENT

Before commencing the hearing of this application, Mr. Arun Bras De Sa, learned Counsel appearing for the Applicants made a request that he may be permitted to amend the present application by

incorporating a prayer for quashing the charge at Exh.21 which has been framed by the Court. He has stated that grounds have been pleaded for quashing of the charge which has been framed. However, inadvertently a prayer to that effect has not been made. On consideration of his request, the Applicants are permitted to amend a prayer clause by incorporating a prayer for quashing the charge at Exh.21 dated 31st July, 2002. Amendment to be carried out forthwith.

2. This application under Section 482 of the Code of Criminal Procedure has been filed by the Applicants who are the Original Accused in Criminal Case No.122/S/2000/C, pending on the file of Judicial Magistrate, First Class, at Vasco-da-Gama. The Applicants assail the Order of the learned Sessions Judge, South Goa at Margao, dated 26th June, 2002, in Criminal Revision Application No.17 of 2002, confirming the Order dated 6th March, 2002, passed by the Judicial Magistrate, First Class, at Vasco-da-Gama, by which the learned Trial Court condoned the delay under Section 473 of the Code of Criminal Procedure.

3. It appears that the prosecution filed an application at Exh.14 praying therein that the delay

in filing the charge-sheet against the Accused for an offence punishable under Section 498-A r/w Section 34 be condoned. The learned Trial Court by its Order dated 6th March, 2002, condoned the delay. The learned Trial Court has taken into consideration that from the year 1995, the wife of the Applicant No.1 had been sincerely attempting for an amicable settlement and it was as a last resort in the year 1997 she gave a written complaint to a social organisation "Savera" and since then, the President of the Organisation had been trying to convince the Applicants and his other relations to take the first informant back. The learned Trial Court ultimately came to the conclusion that the delay had been properly explained and also felt that it was necessary in the interest of justice to condone the delay.

4. The Applicants being aggrieved by the Order of the learned Trial Court filed Criminal Revision Application No.17 of 2002 before the District & Sessions Court at Margao. The learned Sessions Judge at Margao, by his aforesaid Order dismissed the revision confirming the Order of the learned Trial Court.

5. Mr. Arun Bras De Sa, learned Counsel appearing for the Applicants has urged before me that

the explanation given by the first informant was extremely omnibus and vague and the Courts below ought not to have accepted the said explanation. According to the learned Counsel appearing for the Applicants the prosecution has miserably failed to explain the delay of about three years.

6. This is an application under Section 482 of the Code of Criminal Procedure. The two Courts below on appreciation of the facts have rendered their Judgment. There is no perversity pointed out in the reasoning of the two Courts below. The Trial Court has exercised its discretion in exercise of its jurisdiction under Section 473 of the Code of Criminal Procedure. No perversity or illegality is pointed out in the exercise of such discretion. It is not permissible for this Court in the exercise of its powers under Section 482 of the Code of Criminal Procedure to re-appreciate the facts and arrive at a different conclusion. Powers under Section 482 of the Code of Criminal Procedure have to be sparingly used to correct manifest errors on the point of law. This does not appear to be a case of such nature. The prayer, therefore, for quashing and setting aside the Orders of the two Courts below is unsustainable.

7. Turning to the other submission of the

learned Counsel appearing for the Applicants that the material taken at its face value does not disclose the commission of the offence specially against the Applicant No.2, a perusal of the Report which is annexed to this Petition as Exh.P-3 would reveal that there are allegations against both the Applicants No.1 and 2 of having ill treated the first informant on the demand for dowry. The averments in the complaint were sufficient for the learned Trial Court to have framed the charge against both the Applicants. At the time of framing of the charge, the Court is not required to do a meticulous exercise of assessing the evidence but the Court has only to see if the allegations raise a suspicion against the Accused. Perusal of the Report according to me, does indicate prima facie material against the Applicants for framing a charge under Section 498-A of the Indian Penal Code, There is thus no force in the submission of the learned Counsel appearing for the Applicants that there is no prima facie material for framing charge against the Applicants.

8. After giving my anxious consideration to the rival submissions, I am of the opinion that there is no merit in the matter and Criminal Miscellaneous Application No.167 of 2002 is accordingly dismissed.

9. Records and Proceedings be remitted back to the learned Trial Court.

P. V. HARDAS, J.

RD.